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December 11, 2006

**EXRESS MAIL (EV 909996242 US)**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Re: SERIAL NO. US 10/600, 359  
APPLICANT: Hagelin & Company, Inc.  
MARK: "FLAVOR ORDERING SYSTEM"  
Response to Office Action Dated November 17, 2006 Before the  
Mila Airapetion, Law Office 103

Dear Sir:

Enclosed please find Response to Office Action dated November 17, 2006, along with Certification of Richard H. Davidson, Craig D. Hagelin Joseph F. Watkins, Jr., and a Certification from Arnold D. Litt, Esq., both submitted in support of said Response. Also enclosed please find Express Mailing Certification along with self-addressed, stamped postcard, which we ask you date stamp and return to the undersigned.

Very truly yours,

HERTEN, BURSTEIN, SHERIDAN, CEVASCO,  
BOTTINELLI, LITT & HARZ, LLC

By: 

ARNOLD D. LITT, ESQ.

ADL/afw  
Enclosures

cc: Mr. Craig D. Hagelin  
Mr. Richard H. Davidson  
Mr. Timothy J. Watkins, Jr.



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U.S. Patent & TMOff/TM Mail Rpt Dt. #11





**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**SERIAL NO. : US 10/600, 359**

**: RESPONSE TO OFFICE ACTION  
: DATED NOVEMBER 17, 2006**

**APPLICANT : HAGELIN & COMPANY, INC.**

**: BEFORE THE EXAMINER**

**MARK : FLAVOR ORDERING SYSTEM**

**: MILA AIRAPETION  
: LAW OFFICE 103**

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**TO: Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451**

**Dear Sir:**

- In response to the office action dated June 2, 2005, Certifications of Richard H. Davidson and Craig D. Hagelin were enclosed in order to demonstrate under Rule 131, the earlier conception date and reduction to practice then that of the applicant Lawrence Birnbaum, et al. The Examiner has argued that the Certifications are incomplete and has requested additional backup information with respect to the period of time from June 2, 2002 until July of 2003, when the application was filed. The purpose of this Response is to provide that information to the Examiner through a Supplemental Certification from the undersigned, as well as to have both inventors Hagelin and Watkins join in the Certification of Richard Davidson.

**THERE IS NO FURTHER TEXT ON THIS PAGE**

## LEGAL ARGUMENT

The Examiner has provided applicant with a final rejection based upon the references of record. The Examiner contends that the Rule 131 showing of the Applicant through the Certification of Richard H. Davidson, a co-inventor, and the Certification of Craig D. Hagelin, in which Hagelin joins in the Certification of Davidson, are inadequate. In addition, the Examiner requests additional information regarding the period from June 2002 until just prior to the filing of the application in July of 2003.

The Applicant has presented herewith the Certification of Arnold D. Litt, a member of the firm of Herten., Burstein, Sheridan, Cevasco, Bottinelli, Litt & Harz, LLC, attorney for the Applicant, to explain the activities that took place during this period of time. In addition, the Certification of Richard H. Davidson has been somewhat modified and executed by all three inventors as requested by the Examiner.

Clearly, substantial continuous activity took place from June of 2002, when Herten & Burstein were retained as counsel for the Applicant, to just prior to the filing date in July of 2003 of the patent application. Thus, infringement questions respecting third parties were analyzed by the law firm, a prior art patent search was conducted by the firm of Welsh & Flaxman and the results of the search analyzed and discussed with the applicants, all with respect to the subject invention. A patent draftsman was retained and drafted numerous drawings for incorporation into the patent application, and finally a patent application itself was drafted. All of the above were reviewed intimately by the client and with the benefit of client input, continual revisions and redrafting of the application took place during that critical period of time inquired into by the Examiner, ultimately resulting in the finalization and filing of the patent application. The submissions herewith Applicant contends are compliant with the Examiner's request and the Rule 131 showing has been satisfactorily made; accordingly, Applicant requests that the Birnbaum reference be withdrawn. As such, the Boylen reference cannot stand alone as per the specific admissions of the Examiner. Thus, all remaining claims are allowable and allowance thereof is respectfully requested.

The Jelen reference has not been cited by the examiner in opposition to the claims. It is noted that the Jelen reference is totally different from the subject patent application, in that it relates to a shopping list and a food market and describes a system for keeping track of items purchased by a customer. This is like comparing apples and oranges. Jelen is merely an automated system for generating shopping list information on a consumer. The customer information terminal is mounted on a shopping cart. The recipient of the customer shopping data sets up a list of preferred items for the shopper which is then placed in the computer memory for later access when the customer needs to replenish these items.

In no way, shape or form is the Jelen invention a multiple interface for distribution of available flavors comprising a plurality of consumer work stations linked to a central processing hub; the central processing hub, including means for providing consumers with information regarding flavors, the means for providing said information including a flavor search assistant through which a consumer may identify desired flavors based upon a series of input criteria; wherein the criteria include flavor

descriptors, flavor legal status chosen from the group consisting of artificial, natural and artificial, natural flavor, natural type and natural WONF, and a usage category selected from the group consisting of bakery, dairy, beverage confections and oral care.

Nowhere in Jelen is there any disclosure of a flavor search system requiring descriptors and definitions for access to data. It is respectfully argued that it would not be obvious to extend the teachings of Jelen to the flavor distribution system of the applicant. In short, the teachings of Jelen are inapposite to the disclosures in the claims of Applicant.

**THERE IS NO FURTHER TEXT ON THIS PAGE**

## CONCLUSIONS

On the basis of the arguments presented hereinabove, it is respectfully requested that all remaining claims be allowed. Reference is made to conversations between the undersigned and the Examiner in which the Examiner indicated that it would admit the Supplemental Certifications and would consider them in connection with the Rule 131 showing. Applicant thanks the Examiner for the courtesy she showed him during the course of her conference call with him.

Respectfully submitted,

**HERTEN, BURSTEIN, SHERIDAN, CEVASCO,  
BOTTINELLI & LITT, L.L.C.**

By: 

ARNOLD D. LITT, ESQ., Member  
Registration No.: 26,296